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NW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/390,435 09/07/99 SPAKOUSKY J 6479

PM82/0928

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EXAMINER

TRAN A,P

ART UNIT

PAPER NUMBER

3635

3

DATE MAILED:

09/28/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/390,435

Applicant(s)
John G. Spakousky

Examiner
Phi Dieu Tran A

Group Art Unit
3635



☒ Responsive to communication(s) filed on Sep 7, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-44 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-44 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-24, 35-44, drawn to block unit, classified in class 52, subclass 405.4.
 - II. Claims 25-34, drawn to method for making a discrete concrete block, classified in class 52, subclass 741.41.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-24, 35-44, drawn to drawn to block unit, classified in class 52, subclass 405.4.
 - II. Claims 25-31, drawn to method for constructing a load bearing wall, classified in class 52, subclass 745.03.
 - III. Claims 32-34, drawn to method for making a block, classified in class 52, subclass 741.41.

3. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed

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can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product; for example, the blocks are just laid on the ground side by side.

4. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process; for example, the whole block can be molded at the same time.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II or III, restriction for examination purposes as indicated is proper.

6. This application contains claims directed to the following patentably distinct species of the claimed invention: figures 2, 7, 15a, 16a.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

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thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi Dieu Tran A whose telephone number is (703) 306-9136. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:00. The examiner can also be reached on alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Phi Dieu Tran A *PA*

9/21/2000



Carl D. Friedman
Supervisory Patent Examiner
Group 3600